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# **The Ratification Status of the Council of Europe's Istanbul Convention Among EU Member States**

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## THE RATIFICATION STATUS OF THE COUNCIL OF EUROPE'S ISTANBUL CONVENTION AMONG EU MEMBER STATES

*By the beginning of 2020, the Council of Europe's Istanbul Convention has been signed by all EU member states, but still has not been ratified by seven of them. Amongst these non-ratifying states is (was) the UK; all the others are former state socialist countries: Bulgaria, the Czech Republic, Hungary, Lithuania, Latvia and Slovakia. The present analysis is focused around the question: How the delay, or the alienation from the Convention, is justified in these cases? According to the presumption of the analysis, the dominant voice against the ratification is the conservative anti-gender discourse that is political in its nature, is not specific to Central-Eastern Europe, and does not have to do much with the Convention itself. Meanwhile, two other sets of concerns may be identified regarding the Convention: criticism has been raised from feminist and libertarian points of view. Critical feminist voices were never aimed at discouraging states from ratification, and libertarian voices were never strong enough in Europe to influence the related debates significantly. Taking all things into consideration, the rejection of the Istanbul Convention may be considered as collateral damage (as termed by Zacharenko) in the "war on gender" – that is being fought in a transnational sphere, interestingly, not only about gender issues.*

### INTRODUCTION

The Council of Europe's Convention on preventing and combating violence against women and domestic violence, usually referred to as the Istanbul Convention, was adopted by the Council of Europe Committee of Ministers on 7 April 2011, was opened for signature in Istanbul on 11 May 2011; then, following its 10<sup>th</sup> ratification, entered into force on 1 August 2014.

The Convention, according to its Explanatory Report, "*complements and expands the standards set by other regional human rights organisations in this field*" (namely the Inter-American Convention on the prevention, punishment and eradication of violence against women, from 1994; and the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, from 2003);<sup>1</sup> sets "*for the first time in Europe, legally-binding standards to prevent violence against women and domestic violence, protect its victims and punish the perpetrators*" and "*frames the eradication of violence against women in the wider context of achieving substantive equality between women and men*".<sup>2</sup>

As for the European Union, all the member states have signed the Convention by 2016: although by that time there were already concerns raised by social movements and church actors throughout Europe against the Convention, this apparently did not affect the more symbolic act of signing for any of the EU countries. Moreover, on 13 June 2017, the European Union itself also signed the Convention as well.<sup>3</sup> However, the ratification process is turned out to be troubled, or is halted in many corners of the EU. On 28 November, the European Parliament adopted a non-legislative resolution calling on those seven member states, which have not yet ratified the Istanbul Convention, to urgently do so.<sup>4</sup> Meanwhile, the European Union's own endeavour to ratify the Convention has also become more and more challenged politically. On 13 February 2020, the European Parliament adopted a resolution on the priorities set by the EU for the next

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<sup>2</sup> Explanatory Report, Point 6.

<sup>3</sup> Ibid, Point 21.

<sup>4</sup> See: <https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/210/signatures>.

<sup>5</sup> European Parliament resolution of 28 November 2019 on the EU's accession to the Istanbul Convention and other measures to combat gender-based violence (2019/2855(RSP)).

session of the UN Commission on the Status of Women, calling again for the accession of the non-ratifying member states and the EU to the Istanbul Convention.<sup>5</sup>

The present paper focuses on the debates relating to the Convention in Europe. The first section presents three different sets of concerns regarding the Istanbul Convention: firstly, the “conservative”, secondly, the “feminist” and thirdly, the “libertarian” – the terms are here put between inverted commas, because the way I use these, for the purposes of the analysis, may not be in full concordance with the self-identification of the actors.

The first type of concerns has been raised within the framework of the anti-gender discourse, centred around the concept of gender in the Convention, and invoked conservative values (however, I certainly do not intend to apply a blanket approach by suggesting that every conservative actors in Europe have contributed to, or agreed with this discourse). The major element of the second type of critiques is that the Convention is not “gendered” enough, while the third type of worries are centred around exaggerated state intervention. Apparently, the conservative/anti-gender type has been the most pervasive set of concerns throughout Europe.

The second section considers the dynamics of the ratification process in four groups of EU member states, based on the presumption that the political context has been essentially different in the Western part of the EU compared with the new members states in the Central-Eastern region. There are countries where the ratification process has been completed despite the presence of strong anti-gender movements in the West (illustrated by the examples of France and Germany) and in the Central-Eastern European region (illustrated by the examples of Croatia and Poland). Meanwhile, the anti-gender discourse legitimises the non-ratification of the Convention in six Central-Eastern European countries (Bulgaria, the Czech Republic, Hungary, Latvia, Lithuania, Slovakia), and finally, there is the only non-ratifying state in the West, the United Kingdom (now an ex-member of the EU) where the anti-gender voice has not been strong.

The third section is about the dynamics of the debates regarding the ratification of the Istanbul Convention. The first part of this section provides an overview of the debates between the “conservative” opponents (representatives of the anti-gender discourse) and the defenders (the Council of Europe itself and mainstream feminist actors); the second part raises the question whether these debates were relevant at all or not, while the third part considers whether the other two (the “feminist” and the libertarian”) voices have been heard at all or not.

As for methodology, a collection of national reports provides the main basis for the comparative analysis of the ratification processes, prepared in a uniformed structure by the European Network of Legal Experts in Gender Equality and Non-discrimination.<sup>6</sup> There is significant body of scholarship on the different sets of concerns regarding the Convention, especially on the anti-gender discourse; however, my position, i.e. my experiences and perspectives gained in the field of advocacy for women’s rights issues also shaped the framework for analysing the debates.

## 1 DIFFERENT SETS OF CONCERNS REGARDING THE ISTANBUL CONVENTION

In this section, three different sets of related concerns are presented, which are relevant to understand the controversies around the Istanbul Convention. The major one is the “conservative” voice that has articulated the anti-gender agenda years before the adoption of the Convention and has been pervasive globally from the 2010s. There are two other sets of concerns: the feminist and the libertarian. It should be emphasised in advance that, unlike to the firstly mentioned anti-gender discourse, neither of the latter two voices can be considered as anti-

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<sup>5</sup> European Parliament resolution of 13 February 2020 on the EU priorities for the 64th session of the UN Commission on the Status of Women (2019/2967(RSP)).

<sup>6</sup> See: <https://www.equalitylaw.eu/country> .

ratification: the “feminist” critiques are aimed at highlighting some flaws of the Convention, while the “libertarian” critique is rather motivated by a general distrust towards state interventions.

### 1. Conservative concerns (the anti-gender agenda)

In this part, I refer to a set of concerns as conservative; these concerns have been expressed in a radical way, sometimes by large masses of citizens demonstrating on the streets of major European cities.

From the 2000s, a pervasive social movement has been evolved in several countries in Europe (and elsewhere, globally) with a transnational character, organised around the rejection of what they call “gender ideology”, involving actors from the civil society, churches and politicians. Memorable events of this movement include the anti-abortion “marches for life” in Germany from the early 2000s;<sup>7</sup> the first demonstration against same-sex marriage in Paris in November 2012 with the participation of tens of thousands, then in January 2013 with hundreds of thousands of participants;<sup>8</sup> or the series of demonstrations in 2014 in Stuttgart against the planned reform of sexual education in schools.<sup>9</sup>

An early manifestation of the anti-gender discourse was the entry on “Gender” by Jutta Burggraf, a German Catholic theologian, in the *Lexicon* of the Vatican’s Pontifical Council for the Family (published first in Italian in 2003,<sup>10</sup> then translated to numerous languages): as professed by its title, the volume was aimed at clarifying “*ambiguous and debatable terms regarding family, life and ethical questions*”. The anti-gender books of a German Catholic author, Gabriele Kuby, starting with “The Gender Revolution – Relativism in Action” from 2006,<sup>11</sup> have been translated to many languages, and became influential in Central-Eastern Europe as well.

Apparently, gender ideology as a term is rather used as an “empty signifier” by the actors of this movement, to address a series of issues they are uncomfortable with.<sup>12</sup> According to the anti-gender discourse, fighting for gender equality, as provided by the standards of the European Union or the Council of Europe, is actually promoting the “culture of death”.<sup>13</sup> The latter term refers to a series of issues rejected by the movement, like euthanasia, abortion, in vitro fertility treatment (because the procedure may lead to the destruction of unused embryos), or (fruitless) same-sex relations. The inclusion of gender studies into academic curricula has been also objected by the promoters of the anti-gender movement, for example in Germany.<sup>14</sup>

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<sup>7</sup> The first march (*Marsch für das Leben*) was held in 2002, it is annual event from 2008, organised by a Berlin-based NGO, the Bundesverband Lebensrecht.

<sup>8</sup> These demonstrations were organised by the movement ‘Demonstration for All’ (*Manif pour tous*); aimed at counteracting the marriage equality movement, ‘Marriage for All’ (*Mariage pour tous*).

<sup>9</sup> The demonstrations in were held under the slogan ‘Demonstration for All’ (*Demo für Alle*; translation of the French movement’s name, *La Manif pour tous*) against the federal state level school reform plan in Baden-Württemberg to introduce “acceptance of sexual diversity” as a guiding principle of sexual education.

<sup>10</sup> Pontificio consiglio per la famiglia, “Lexicon: Termini ambigui e discussi su famiglia, vita e questioni etiche [Lexicon: Ambiguous and Debatable Terms Regarding Family, Life and Ethical Questions],” (Bologna: Edizioni Dehoniane, 2003).

<sup>11</sup> Gabriele Kuby, *Die Gender-Revolution Relativismus in Aktion* (Kisslegg: Fe-Medienverl., 2006).

<sup>12</sup> See e.g. Stefanie Mayer and Birgit Sauer, ““Gender Ideology” in Austria: Coalitions around an Empty Signifier,” in *Anti-Gender Campaigns in Europe: Mobilizing against Equality*, ed. Roman Kuhar and David Paternotte (London: Rowman and Littlefield, 2017).

<sup>13</sup> See e.g. Rita Perintfalvi, “The real face of the anti-gender *Kulturkampf* – the rise of a new kind of political and religious fundamentalism in Europe?,” (Hungarian Women’s Lobby, [2015]), <https://bit.ly/39eLYCZ>; Petra Ďurinová, “Slovakia,” in *Gender as Symbolic glue: The position and role of conservative and far right parties in the anti-gender mobilizations in Europe*, ed. Eszter Kováts and Maari Põim (FEPS – Foundation for European Progressive Studies; Friedrich-Ebert-Stiftung Budapest, 2015).

<sup>14</sup> Alice Blum, “Germany,” in *Gender as Symbolic glue: The position and role of conservative and far right parties in the anti-gender mobilizations in Europe*, ed. Eszter Kováts and Maari Põim (FEPS – Foundation for European Progressive Studies; Friedrich-Ebert-Stiftung Budapest, 2015).

From the mid-2010s, numerous analyses were published on the role of the Vatican<sup>15</sup> or the roles of Pope John Paul II, Pope Benedict XVI and Pope Francis,<sup>16</sup> on the involvement of the Catholic church in the “war against gender ideology/genderism” in different countries (e.g. in Poland,<sup>17</sup> in Slovenia and in Croatia<sup>18</sup>) or on the transnational level as well.<sup>19</sup> However, the connection between the Roman Catholic church and the anti-gender movement is obviously not exclusive: in some countries the anti-gender movement is promoted by other (Christian) churches, secular political forces and civil society actors.

In the anti-gender discourse, some documents of supranational bodies are frequently blamed for promoting „gender ideology”. A prominent example is the Report of the Fourth World Congress on Women (organised by the UN in Beijing, 1995), which is seen as a dangerous tool because of its „radical [constructivist] definition of ‘gender’”.<sup>20</sup> The Council of Europe’s Istanbul Convention is usually rejected as a “carrier of feminist ideology”,<sup>21</sup> basically because it defines gender as a social construct „rather than a biological distinction”.<sup>22</sup> Moreover, the Istanbul Convention is at the forefront of attacks in the anti-gender discourse because it urges states to eradicate stereotyped gender roles, especially in the field of education (according to the anti-gender argumentation, this would encourage children to question whether they are girls or boys). The above mentioned German author, Kuby has raised concerns regarding this endeavour already before the adoption of the Convention, relating to the gender equality standards of the European Union, by claiming that the elimination of “sexual stereotyped” images from the media would threaten „the innermost core of the culture, namely the different identities of men and women”.<sup>23</sup> In the European anti-gender discourse, “gender ideology” is considered as “Ebola from Brussels”.<sup>24</sup> In the Central-Eastern region of Europe, the Convention has been often blamed for stigmatising men as aggressors (as violence against women is framed as a structural feature of societies) and for desecrating the concept of family (by applying the concept of domestic violence).

One of the first key contributions to the understanding of this political agenda is an edited volume on the anti-gender mobilizations in Europe, published in 2015.<sup>25</sup> In the chapter on Hungary, the author Anikó Félix reflects on the title, and on the analytical framework of the volume: “*Gender as a symbolic glue integrates anti-EU, anti-liberal, anti-communist and homophobic attitudes, which*

<sup>15</sup> See e.g.: David Paternotte, “Christian Trouble: The Catholic Church and the Subversion of Gender,” *CritCom: A Forum for Research and Commentary on Europe* (2014, May 8); Mary Anne Case, “After Gender the Destruction of Man? The Vatican’s Nightmare Vision of the “Gender Agenda” for Law,” *Pace Law Review* 31, no. 3 (2011), <http://digitalcommons.pace.edu/plr/vol31/iss3/2>.; David Paternotte, “Christian Trouble: The Catholic Church and the Subversion of Gender,” *CritCom: A Forum for Research and Commentary on Europe* (2014, May 8).

<sup>16</sup> See e.g.: Mary Anne Case, “Trans Formations in the Vatican’s War on “Gender Ideology,”” *Signs: Journal of Women in Culture and Society* 44, no. 3 (2019), <https://doi.org/10.1086/701498>.

<sup>17</sup> Agnieszka Graff, “Report from the gender trenches: War against ‘genderism’ in Poland,” *European Journal of Women’s Studies* 21, no. 4 (November) (2014), <https://doi.org/10.1177/1350506814546091>.

<sup>18</sup> Roman Kuhar, “Playing with science: Sexual citizenship and the Roman Catholic Church counter-narratives in Slovenia and Croatia,” *Women’s Studies International Forum* 49, no. March-April (2014), <https://doi.org/10.1016/j.wsif.2014.07.005>.

<sup>19</sup> See e.g.: Mieke Verloo, *Varieties of Opposition to Gender Equality in Europe* (New York: Routledge, 2018).; David Paternotte and Roman Kuhar, “Disentangling and Locating the “Global Right”: Anti-Gender Campaigns in Europe,” *Politics and Governance* 6, no. 3 (2018), <https://doi.org/10.17645/pag.v6i3.1557>.

<sup>20</sup> Case, “After Gender the Destruction of Man? The Vatican’s Nightmare Vision of the “Gender Agenda” for Law.” p. 804.

<sup>21</sup> Weronika Grzebalska, “Poland,” in *Gender as symbolic glue: The position and role of conservative and far right parties in the anti-gender mobilizations in Europe*, ed. Eszter Kováts and Maari Pöim (FEPS – Foundation for European Progressive Studies; Friedrich-Ebert-Stiftung Budapest, 2015).

<sup>22</sup> Ďurinová, “Slovakia.” p. 105.

<sup>23</sup> Case, “After Gender the Destruction of Man? The Vatican’s Nightmare Vision of the “Gender Agenda” for Law.” pp. 805-806.

<sup>24</sup> Elżbieta Korolczuk and Agnieszka Graff, “Gender as “Ebola from Brussels”: The Anticolonial Frame and the Rise of Illiberal Populism,” *Signs: Journal of Women in Culture and Society* 43, no. 4 (Summer) (2018), <https://doi.org/10.1086/696691>.

<sup>25</sup> Eszter Kováts and Maari Pöim, eds., *Gender as Symbolic glue: The position and role of conservative and far right parties in the anti-gender mobilizations in Europe* (FEPS – Foundation for European Progressive Studies; Friedrich-Ebert-Stiftung Budapest, 2015).

can produce voters for the rightists. In the case of far right anti-government, anti-Semitic and anti-immigrants attitudes are also included into the discourse of "gender".<sup>26</sup> The author of the chapter on France, Gaël Brustier also applies this concept, by claiming that the "discourse against "gender ideology" was an ideological glue for conservatives, intellectuals and activists" to unify "different rightist traditions".<sup>27</sup> In 2017, Weronika Grzebalska, Eszter Kováts and Andrea Pethő claimed that the "The demonization of 'gender ideology' has become a key rhetorical tool in the construction of a new conception of 'common sense' for a wide audience".<sup>28</sup> In 2018, Kováts expressed criticism towards the general interpretation of the progressives that the anti-gender movement could be understood simply as a backlash against achieved levels of gender equality, reproductive rights or the rights of sexual minorities. Kováts situates this movement in the context of the demand for right-wing populism, i.e. that a large parts of electorates perceives that "their concerns are kept off the political agenda by political elites (e.g. growing precarization); that their political elites are powerless in the face of transnational companies and supranational bodies";<sup>29</sup> while the promoters of the anti-gender movement "challenge liberal democracy as we know it, and in that framework, they question the consensuses of the so-called progressive actors".<sup>30</sup>

## 1. 2 Feminist concerns

Feminists in Europe (this section I refer to mainstream feminists, especially professionals/experts in the field gender equality policies and combating violence against women) have been overwhelmingly and outspokenly supporting the Istanbul convention, and worrying about the abandonment of the ratification of it. As Katalin Fábián claims, the lack of effective commitments in this field "may lead to even less effective pressure on government behavior and resource allocation in support of violence prevention in intimate relations rather than more populist priorities".<sup>31</sup> Moreover, the Istanbul Convention's provisions imply principles, such as the prohibition of mandatory alternative dispute resolution processes or the consideration of victims' and children's safety in relation to visitation rights, which were crystallized by the ethics and experiences of actors working in the field of combating violence against women and protecting victims.

It may come as a surprise to some, especially in the light of the critiques from the anti-gender discourse, that not even all feminists are fully satisfied with the approach and the content of the Istanbul Convention. Some major concerns from a feminist perspective were summarised by Ingrid Westendorp (presenting the outcomes of a conference, held in Lund in 2018, where experts gathered to discuss the challenges connected to the implementation of the Istanbul Convention<sup>32</sup>), who claimed first of all that "[i]t is clear that the Istanbul Convention, like most multilateral treaties, is a text consisting of compromises and generalities so as to attract as many States parties as possible".<sup>33</sup>

<sup>26</sup> Anikó Félix, "Hungary," in *Gender as Symbolic glue: The position and role of conservative and far right parties in the anti-gender mobilizations in Europe*, ed. Eszter Kováts and Maari Pöim (FEPS – Foundation for European Progressive Studies; Friedrich-Ebert-Stiftung Budapest, 2015).

<sup>27</sup> Gaël Brustier, "France," in *Gender as Symbolic glue: The position and role of conservative and far right parties in the anti-gender mobilizations in Europe*, ed. Eszter Kováts and Maari Pöim (FEPS – Foundation for European Progressive Studies; Friedrich-Ebert-Stiftung Budapest, 2015). p. 34.

<sup>28</sup> Weronika Grzebalska, Eszter Kováts, and Andrea Pethő, "Gender as symbolic glue: how 'gender' became an umbrella term for the rejection of the (neo)liberal order," *Political Critique. org* (2017, January 13), <https://bit.ly/3cm9S1q>.

<sup>29</sup> Eszter Kováts, "Questioning Consensuses: Right-Wing Populism, Anti-Populism, and the Threat of 'Gender Ideology' " *Social Research Online* (2018), <https://doi.org/10.1177/1360780418764735>, p. 5.

<sup>30</sup> Kováts, "Questioning Consensuses: Right-Wing Populism, Anti-Populism, and the Threat of 'Gender Ideology' ". p. 9.

<sup>31</sup> Katalin Fábián, "The Politics of Domestic Violence in Central Europe: International and Domestic Contestations," in *Global Responses to Domestic Violence*, ed. Eve S. Buzawa and Carl Buzawa (Springer International Publishing, 2017). p. 134.

<sup>32</sup> The papers of this conference will be published in a forthcoming volume: Johanna Niemi, Lourdes Peroni, and Vladislava Stoyanova, eds., *International Law and Violence Against Women: Europe and the Istanbul Convention* (Routledge).

<sup>33</sup> Ingrid Westendorp, "The Istanbul Convention; new perspectives for victims of domestic violence?," *Maastricht University Blog*, 2018, June 8, <https://bit.ly/32GGVc9>.

One of the problematic aspects of the Convention, according to Westendorp's summary, is that while *"the point of departure of the Convention is that women will be protected against all forms of violence"*, paradoxically, domestic violence (*"the most common crime against women"*) is dealt by the Convention in a gender-neutral way.<sup>34</sup> (Indeed, according to the Convention's Explanatory Report, the concept of domestic violence is based in this context on *"a gender neutral definition that encompasses victims and perpetrators of both sexes"*<sup>35</sup>). As the author argues, the *"gender-neutral approach is not helpful since on average women find themselves in a different, i.e. weaker socio-economic position from men which makes them not only more vulnerable for domestic violence, but also makes it harder for them to leave an abusive relationship"*.<sup>36</sup>

Secondly, from the viewpoint represented by the author, the approach of the Convention itself contributes to the perpetuation of (already outdated) traditional societal roles and gender stereotypes, as it focuses on shelter provision for domestic violence victims, instead of those arrangements, including restraining orders, when the perpetrator is the one to be evacuated (*"Men are no longer considered to be the king of the castle and it is strange that the victims and the children are uprooted, while the perpetrator is allowed to sit [...] in the family home"*).<sup>37</sup>

The third major point of concern raised by the author is that *"the Convention predominantly takes a criminal law approach"*, while in reality many of the female victims just do not want to press charges against their husbands or partners, because *"[c]riminal records may reflect negatively on the whole family and incarcerating or fining the perpetrator affects the family income"*, thus states should be committed to find alternative solutions to protect these women as well.<sup>38</sup>

From the aspect of migrant, refugee, and asylum-seeker women, slight points of feminist concerns have been raised. Vladislava Stoyanova opines that the overall potential of the Convention in the area of migrant women's protection is rather limited; however, she appreciates the Convention's intention to respond to the desperate situation of migrant women who may have to choose between staying in an abusive relationship or being deported (by providing an immigration relief to victims of violence).<sup>39</sup> Lourdes Peroni, who acknowledges that the text of the Convention *"moves away from frames long criticised for their stigmatising and racialising risks"*, still claims that *"[p]otentially stigmatising frames are not entirely left behind, as the rather culturalist logic underpinning 'honour' illustrates"*.<sup>40</sup>

### 1.3 Libertarian concerns

There is a third set of concerns, which I label as "libertarian", focusing on the threat that states would gain too much of oppressive power over individuals through tightened criminal law measures, as a possible consequence of Istanbul Convention's ratification. In this context, the libertarian approach is hallmarked by the (rather derogatory) term of "carceral feminism", coined by Elizabeth Bernstein in the USA in 2007, as a derogative reference to *"the commitment [...] to a law and order agenda"* of feminist movements against rape, domestic violence, and sex trafficking, and to the alleged *"drift from the welfare state to the carceral state as the enforcement apparatus for feminist goals"*.<sup>41</sup>

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<sup>34</sup> Ibid.

<sup>35</sup> Explanatory Report, Point 41.

<sup>36</sup> Westendorp, "The Istanbul Convention; new perspectives for victims of domestic violence?."

<sup>37</sup> Ibid.

<sup>38</sup> Ibid.

<sup>39</sup> Vladislava Stoyanova, "Stark Choice: Domestic Violence or Deportation? The Immigration Status of Victims of Domestic Violence under the Istanbul Convention," *European Journal of Migration and Law* 20, no. 1 (2018), <https://doi.org/10.1163/15718166-12340020>.

<sup>40</sup> Lourdes Peroni, "Violence Against Migrant Women: The Istanbul Convention Through a Postcolonial Feminist Lens," *Feminist Legal Studies* 24 (2016), <https://doi.org/10.1007/s10691-016-9316-x>. p. 64.

<sup>41</sup> Elizabeth Bernstein, "The Sexual Politics of the "New Abolitionism"," *Differences: A Journal of Feminist Cultural Studies* 18, no. 3 (2007), <https://doi.org/10.1215/10407391-2007-013>.p. 142.

More than a decade later, similar concerns have been raised in Europe. Zana Tsoneva (cited by Stanislav Dodov) claimed specifically regarding the Istanbul Convention that it was *"filled with the neoliberal spirit of the so-called carceral feminism or the mobilisation of the repressive institutions of the state in the tackling of the gender-based violence and inequality"*; and expressed major scepticism towards the Convention's criminal law approach: *"However, interpersonal violence cannot be addressed with state violence."*<sup>42</sup>

Libertarians may be, at the end of the day, concerned about the rights of perpetrators. According to Mala Htun and Francesca R. Jensenius, the *"key remaining challenge for women's rights activists and their supporters [...] is to find the right balance between using and restraining state power"*, because while *"[a]lmost everyone wants violence and harassment to be taken more seriously, [...] et there is a risk that campaigns against sexual misconduct may strengthen the carceral state, [...] and infringe on other important rights."*<sup>43</sup>

Libertarian concerns may be raised from the aspects of victims as well (however, these concerns are different from the above-mentioned feminist concerns regarding the dominance of the criminal law approach in the context of the Istanbul Convention). Htun and Jensenius claim that the instruments of "carceral feminism", such as mandatory arrest laws, *"may empower law enforcement authorities at the expense of individual women, particularly intersectionally disadvantaged groups of women"*, and conclude that *"carceral feminism runs the risk of diverting attention from structural conditions conducive to gender violence, such as social inequalities and the concentration of economic and political power in men's hands"*.<sup>44</sup>

## 2 THE DYNAMICS OF RATIFICATION

This section is aimed at presenting the dynamics of the process of ratification (or the non-ratification) regarding four groups of European countries, in light of the political/ideological concerns presented in the previous section, first of all the most dominant one, the conservative anti-gender discourse.

The country-level scenarios are categorized by ratification status on the one hand, and on the other hand, by region: West and Central-Eastern Europe. I chose this arrangement because of my presumption that the anti-gender discourse should be discussed in the context of populism; more precisely, populisms. This presumption draws from Rogers Brubaker's conceptual framework, who distinguish between "civilizational" (Northern/Western) and nationalist (Eastern) forms of populism in Europe; the first is characterized with preoccupation with the Islam, thus the rhetoric emphasizes European civilizational values, including gender equality, while in Central-Eastern Europe (with the prominent example of Hungary), *"[i]n the context of post-communist transition, the nationalist semantics of self and other externalize liberalism, construing it as a non-national and even anti-national project"*.<sup>45</sup>

The first group consists of Western EU member states, where the ratification of the Convention has concluded, despite a significant domestic anti-gender movement; this scenario is illustrated by the cases of France and Germany (notably, the anti-gender discourse has been significant in Italy and Spain as well, among the 'old' EU member states). The second group includes EU member states from Central-Eastern Europe, where the Convention has been ratified despite the fierce

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<sup>42</sup> Stanislav Dodov, "It was never about the Istanbul Convention," *LeftEast* (2018, August 2), <https://www.criticatrac.ro/lefteast/it-was-never-about-the-istanbul-convention/>.

<sup>43</sup> Mala Htun and Francesca R. Jensenius, "Fighting Violence Against Women: Laws, Norms & Challenges Ahead," *Daedalus* 149, no. 1 (2020), [https://doi.org/10.1162/daed\\_a\\_01779](https://doi.org/10.1162/daed_a_01779). p. 154.

<sup>44</sup> Ibid. p. 154.

<sup>45</sup> Rogers Brubaker, "Between nationalism and civilizationism: the European populist moment in comparative perspective," *Ethnic and Racial Studies* 40, no. 8 (2017), <https://doi.org/10.1080/01419870.2017.1294700>, p. 1208.



activism of the anti-gender movement; Croatia and Poland are the examples for this scenario. The third group consists of the only non-ratifying (ex) member state of the EU: the United Kingdom. The fourth group includes those six EU member states in Central-Eastern Europe, where the Convention has not been ratified by the beginning of 2020: Bulgaria, the Czech Republic, Hungary, Latvia, Lithuania and Slovakia.

Besides the key developments of the domestic-level ratification processes in these countries, the aspect of the EU-level ratification is also taken into consideration, focusing on the voting in the European Parliament, on 28 November 2019, on the motion for resolution on the EU's accession to the Istanbul Convention.<sup>46</sup>

## *2.1 Ratification despite significant anti-gender movements in the West*

### *2.1.1 France*

France was one of the first states to sign the Istanbul Convention, on 11 May 2011, then ratified it three years later, on 4 July 2014. In 2017, Emmanuel Macron, who had been elected as the President of the Republic a couple of months earlier, announced on the occasion of the International Day for the Elimination of Violence against Women (25 November) that combating gender-based violence would be a the top priority (as part of the “national cause” of gender equality) during his 5-year presidential term.<sup>47</sup>

Although France was one of the hotspots of the rising anti-gender movement in the 2010s, the discourse centred around other specific issues (like same-sex marriage or the topic of gender equality in schoolbooks) but not about gender-based violence or the Istanbul Convention. However, on 28 November 2019, out of the 91 MEPs who voted against the resolution on the EU's accession to the Convention 20 were from France.

### *2.1.2 Germany*

Germany signed the Istanbul Convention on the same day as France (11 May 2011), however, the ratification process took twice longer time, more than six years. The reason for the slow pace was that the national legislation had to be brought to full conformity with the Convention before the ratification, as provided by the German Constitution.<sup>48</sup> Eventually, Germany ratified the Convention on 12 October 2017.

The most controversial issue during the ratification process was the implementation of Article 36 (on sexual violence, including rape) as this provision in the Convention required substantial changes to the definitions of rape and sexual assault in the Criminal Code. In this context, a “libertarian” concern has been evolved, shared by the Federal Ministry of Justice, federal judges and politicians from different parties, who were worried about the sexual freedom of Germans. However, the mass sexual assaults during the New Year's Eve celebrations in Cologne in 2015/2016<sup>49</sup> turned many of the former opponents into supporters of tighter criminal provisions (notably, these claims were

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<sup>46</sup> The source of data is the VoteWatch Europe's database: <https://www.votewatch.eu/en/term9-eu-accession-to-the-istanbul-convention-and-other-measures-to-combat-gender-based-violence-motion-fo-8.html#/##vote-tabs-list-4>.

<sup>47</sup> See: Marie Mercat-Bruns, *France: Gender equality - How are EU rules transposed into national law? Country report*, European Commission, Directorate-General for Justice and Consumers (2019), <https://www.equalitylaw.eu/downloads/5043-france-country-report-gender-equality-2019-pdf-1-6-mb>. p. 31.

<sup>48</sup> Ulrike Lembke, *Germany: Gender equality - How are EU rules transposed into national law? Country report*, European Commission, Directorate-General for Justice and Consumers (Brussels, 2018), <https://doi.org/10.2838/634519>. p. 47.

<sup>49</sup> During New Year's Eve street carnivals 2015/2016 (a couple of month after the beginning of the „European refugee crisis” in the summer of 2015), incidents were reported not only from Cologne, but from Hamburg and other cities in Germany, where men and boys with migrant backgrounds (often from North Africa) circled and sexually assaulted or harassed (typically „white” German) women at public spaces.

often characterised by racist overtones).<sup>50</sup> In January 2016, the *Lohfink case*<sup>51</sup> also contributed to the change of the attitudes regarding sexual crimes; eventually, in July 2016 the Federal Parliament adopted several amendments to the Criminal Code, including the ‘no means no’ principle regarding the definition of rape and two new offense definitions (sexual harassment and offenses out of groups).<sup>52</sup>

While Germany was an important scene of the European anti-gender movement’s evolution, as mentioned in the previous section of the paper, the anti-gender discourse played only a limited role in the debates relating to the German ratification of the Convention. However, in November 2019, out of the 91 MEPs who voted against the resolution on the EU’s accession to the Convention, 12 were from Germany.

## 2.2 Ratification despite significant anti-gender movements in Central-Eastern Europe

### 2.1.1 Croatia

Croatia signed the Istanbul Convention on 22 January 2013, then ratified it more the five years later, on 12 June 2018. The ratification was surrounded by fierce political debates: conservative groups (opposing the “gender ideology”, as presented in the previous section) organised numerous demonstrations against the Convention, including in a massive rally in Zagreb, on 24 March 2018.<sup>53</sup>

Clerical and conservative right-wing circles, formally represented by the citizens’ initiative ‘The truth about the Istanbul Convention’, attempted to initiate a referendum against the Convention, by collecting signatures from supporters during a two-week-period of time (13–27 May 2018). The verification procedure of the signatures was concluded only in October, when it was established that the number of valid signatures was insufficient.<sup>54</sup>

The majority party in the governing coalition was split over this issue, but the pro-ratification forces (supported by the Prime Minister, the head of the majority party), including some opposition parties, prevailed in the Parliament: eventually 110 of the MPs voted for, and 30 against ratification, and there were 2 abstentions.<sup>55</sup>

Reacting to the concerns of the opponents that the Convention would bring ‘gender ideology’ to Croatia, manifested in features like same-sex marriage or extended transgender rights, the government decided to attach a declaration to the ratification instrument: “*The Republic of Croatia considers that the provisions of the Convention do not contain the obligation to introduce gender ideology in the Croatian legal and educational system, nor the obligation to change the constitutional definition of marriage.*”<sup>56</sup>

In November 2019, one of the 91 MEPs who voted against the resolution against the Convention’s ratification by the EU was from Croatia.

### 2.2.2 Poland

When it signed the Convention on 18 December 2012, Poland declared that it would apply the Convention “*in accordance with the principles and the provisions of the Constitution of the Republic*

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<sup>50</sup> Lembke, *Germany: Gender equality - How are EU rules transposed into national law? Country report*. p. 47.

<sup>51</sup> Gina-Lisa Lohfink, a model and media personality was sentenced and fined for making false accusations against two men whom she had accused of raping her. Tatjana Hörnle, “The New German Law on Sexual Assault and Sexual Harassment,” *German Law Journal* 18, no. 6 (2017), <https://doi.org/10.1017/S2071832200022355>.

<sup>52</sup> Hörnle, “The New German Law on Sexual Assault and Sexual Harassment.”

<sup>53</sup> Adrijana Martinović, *Croatia: Gender equality - How are EU rules transposed into national law? Country report*, European Commission, Directorate-General for Justice and Consumers (Brussels, 2019), <https://doi.org/10.2838/775603>. p. 75.

<sup>54</sup> Ibid, p. 76.

<sup>55</sup> Ibid, p. 75.

<sup>56</sup> See: [https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/210/declarations?p\\_auth=ux4rVpLE](https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/210/declarations?p_auth=ux4rVpLE).

of Poland".<sup>57</sup> This declaration was confirmed when Poland ratified the Convention on 27 April 2015 – a few months before the Law and Justice party (PiS) took over the government (in November 2015).

The ratification process was accompanied by persistent debates; most of the controversy surrounded the fundamental concepts of the Convention (in the spirit of the anti-gender discourse, presented in the previous section): the structural nature of violence against women and gender discrimination; moreover, the obligation of the state to counter stereotyped gender roles.<sup>58</sup>

In 2017, the Minister for Family, Labour and Social Policy claimed in an interview that after ratification, Polish law should be amended in a way which *"on the one hand, will increase the safety of people suffering violence and, on the other hand, allow to keep the subjectivity and autonomy of the family"*.<sup>59</sup>

The attacks against the Convention have continued after the ratification: e.g. the 'Stopgender' ('Zatrzymajgender') campaign, run by Catholic actors, recurrently criticised the government, in particular the Government Plenipotentiary for Civil Society and Equal Treatment, for not taking sufficient actions to initiate Poland's withdrawal from the Convention.<sup>60</sup> On 31 December 2018, the government published a draft bill on amending the 2005 Act on counteracting family violence on the website of the Ministry for Family, Employment and Social Policy. The draft bill included significant modifications regarding the definition of family/domestic violence and the police procedure to track recurrent incidents of abuse; however, reacting to fierce criticism from experts, who claimed that these provisions would not in compliance with the Istanbul Convention, the Prime Minister withdrew the proposal a few days later (3 January 2019) and announced publicly that all the "dubious amendments" will be removed from the document; the Deputy Minister of Family, Labour and Social Policy, who was responsible for the preparation of the draft bill, resigned on the same day.<sup>61</sup>

In November 2019, the 25 of total 91 MEPs who voted against the EU's accession to the Convention were from Poland.

## 2.3 Non-ratification in the West

### 2.3.1 The United Kingdom

The UK signed the Convention on 8 June 2012. There were parliamentary questions, both in the House of Commons and the House of Lords, in 2014 and 2015 about the ratification process,<sup>62</sup> and in February 2015, the Joint Committee on Human Rights raised the concern that *"the delay in*

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<sup>57</sup> Ibid.

<sup>58</sup> Eleonora Zielińska and Anna Cybulko, "Poland: Gender Equality Law in 36 European Countries: How are EU rules transposed into national law? 2019 Report," ([forthcoming]); Graff, "Report from the gender trenches: War against 'genderism' in Poland". Magdalena Grabowska, "Between Gender Studies and „Gender Ideology”: Gender Education in Poland" (paper presented at the Second International Gender Workshop: 'Overcoming Gender Backlash: Experiences of Ukraine, Belarus, Russia, Georgia, Armenia and Poland', Kyiv, Ukraine, 2013).

<sup>59</sup> Eleonora Zielińska, *Poland: Gender equality - How are EU rules transposed into national law? Country report*, European Commission, Directorate-General for Justice and Consumers (Brussels, 2018), <https://doi.org/10.2838/767848>. p. 56.

<sup>60</sup> Zielińska and Cybulko, "Poland: Gender Equality Law in 36 European Countries: How are EU rules transposed into national law? 2019 Report."

<sup>61</sup> Eleonora Zielińska, *Poland: Governmental draft amendments to the law of 2005 on family violence are not in compliance with the Istanbul Convention. Flash Report*, European network of legal experts in gender equality and non-discrimination (2019, January 29), <https://bit.ly/2why5pg>.

<sup>62</sup> Grace James, *United Kingdom: Gender equality - How are EU rules transposed into national law? Country report*, European Commission, Directorate-General for Justice and Consumers (Brussels, 2019), <https://doi.org/10.2838/090361>. p. 60.

*ratifying the Istanbul Convention could harm the UK's international reputation as a world leader in combating violence against women and girls".*<sup>63</sup>

According to an opinion piece published by a policy expert in 2016, the ratification of the Convention is a both a legal and a political question: although parliamentarians and women's organisations have called for the ratification of the Convention, *"for reasons which are not clear, the UK government has been dragging its feet"*.<sup>64</sup> In February 2019 the representative of the End Violence Against Women Coalition opined that *"Brexit could be overshadowing the convention and pushing it down the political agenda"*.<sup>65</sup> In October 2019, the government published a progress report on the ratification, and confirmed that the UK *"remains committed to ratifying the Istanbul Convention"*, however, *"[t]he Government takes its international commitments very seriously and will only ratify when we are satisfied that the UK has met all our obligations under the Convention"*.<sup>66</sup>

There was one MEP from the UK among those 91 MEPs who voted against the resolution on the Convention's ratification by the EU in November 2019.

## 2.4 Non-ratification in Central-Eastern Europe

### 2.4.1 Bulgaria

Bulgaria signed the Istanbul Convention on 21 April 2016. There was strong civil society pressure for ratification, but according to the initial reasoning of the government, the Bulgarian legislation was not in full compliance with the Convention. The review of the legislation was carried out jointly by the government, by experts of the Council of Europe and civil society organisations, and identified several problematic features, e.g. the definition of rape in Bulgarian law (not based on the concept of a lack of consent), or the lack of criminal provisions on stalking.<sup>67</sup>

However, from late 2017 ratification has become a major issue in societal and political debates, and *"due to the introduction from abroad of the notion of gender ideology"* and these debates were intensified by *"the Euro-sceptic attitudes and those overtly against the European Union"* from the first half of 2018, the Bulgarian Presidency of the European Council.<sup>68</sup> Opponents claimed that the Convention was *"a way to affirm the controversial term 'gender' and to introduce gender ideology"*, was *"a tool for introducing the 'third gender'"*, was *"not in fact about VAW [violence against women], but concerned trans and intersex issues"*.<sup>69</sup>

Although after the elections in 2017, a new government coalition was formed, the bill on ratification was submitted to Parliament in January 2018. A few weeks later the bill was referred by a majority of the MPs to the Constitutional Court for a preliminary ruling on the constitutionality of the draft;<sup>70</sup> actually, the Convention's concept of gender was found to be problematic. The Council of Europe's Human Rights Commissioner react to the developments: *"In Bulgaria some critics, including*

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<sup>63</sup> United Kingdom, House of Lords - House of Commons, Joint Committee on Human Rights, Violence against women and girls -Sixth Report of Session 2014–15, 19 February 2015 on Violence against Women and Girls, HL Paper 106, HC 594, 19 February 2015, <https://publications.parliament.uk/pa/jt201415/jtselect/jtrights/106/106.pdf>. p. 62.

<sup>64</sup> Lisa Gormley, "Rape myths and the rights of victims: why the UK needs to ratify the Istanbul Convention," *LSE Blogs, LSE Centre for Women, Peace and Security*, 2016, October 21, <https://bit.ly/38hebYF>.

<sup>65</sup> Maya Oppenheim, "Austerity cuts blamed for UK failure to ratify pan-European convention combatting violence against women," *Independent* (2019, February 18), <https://bit.ly/2vnaC61>.

<sup>66</sup> Home Office: Ratification of the Council of Europe Convention on Combating Violence Against Women and Girls and Domestic Violence (Istanbul Convention) – 2019 Report on Progress October 2019, p. 27, <https://bit.ly/2VBEFRZ>; Oppenheim, "Austerity cuts blamed for UK failure to ratify pan-European convention combatting violence against women."

<sup>67</sup> Genoveva Tisheva, *Bulgaria: Gender equality - How are EU rules transposed into national law? Country report*, European Commission, Directorate-General for Justice and Consumers (Brussels, 2019), <https://doi.org/10.2838/57708>. p. 69.

<sup>68</sup> Ibid, p. 15.

<sup>69</sup> Ibid, p. 71.

<sup>70</sup> Ibid, p. 71.

politicians, are opposing the ratification of the Convention using fallacious and uninformed claims.”<sup>71</sup>

In July 2018, the Constitutional Court ruled that the Convention was not in compliance with the Bulgarian Constitution because it was “going against the principle of legal certainty”.<sup>72</sup>

According to a written reaction by human rights NGOs (published on the website of the Bulgarian Helsinki Committee), “[t]he incomprehensible and contradictory text of the decision lacks a clear and consistent line of argumentation that allows understanding how the court comes to conclude that the Istanbul Convention, the most comprehensive legal framework on combating violence against women and girls, is unconstitutional.”<sup>73</sup> A group of civil society organizations, led by the Bulgarian Fund for Women formed a coalition named “Equal BG/Bulgaria” (*Ravni BG*), to address, among other issues, the attacks against the Istanbul Convention from January 2018.<sup>74</sup>

In November 2019, among the 91 MEPs who voted against the resolution on the Convention’s ratification by the EU 8 were from Bulgaria.

#### 2.4.2 Czech Republic

The Istanbul Convention was signed by the Czech Republic on 2 May 2006. It was expected to have been ratified by mid-2018, however, representatives of Christian churches and some MPs have started to campaign against the ratification by using a nationalist version of the anti-gender argument, claiming that “if it is ratified, the traditional Czech family will be dismantled and people will be afraid to tell to their children that they are boys or girls and educate them as boys or girls”.<sup>75</sup> The director of the Czech Women’s Lobby (a network of women’s NGOs) claimed in an interview, in late 2018, that when the Czech Republic “put its signature to the Convention, a few years ago, there was no such discussion here. But in between, many things happened and now the society is divided. Many people when they hear ‘Istanbul Convention’ directly think it has something to do with migration or the effort to legalise homosexual marriages in the Czech Republic.”<sup>76</sup>

In November 2019, 4 out of the 91 MEPs who voted against the resolution on the EU’s accession to the Convention were from the Czech Republic.

#### 2.4.3 Hungary

The Istanbul Convention was signed by Hungary on 14 March 2014. The Ministerial Reasoning of the newly adopted Criminal Code in 2012 already referred explicitly to the Istanbul Convention as one of the key international norms on which the relevant provisions of the code had been based.<sup>77</sup>

In 2014 and 2015, heated debates took place within and outside Parliament about the ratification of the Convention.<sup>78</sup> In June 2015, the Minister for Human Capacities submitted a proposal to the

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<sup>71</sup> Commissioner for Human Rights Council of Europe, “The Istanbul Convention protects women, without hidden purposes,” (2018, January 15). <https://www.coe.int/en/web/commissioner/-/the-istanbul-convention-protects-women-without-hidden-purposes>.

<sup>72</sup> Bulgaria, Constitutional Court ruling No 13, Sofia, 27 July 2018, promulgated in State Gazette No. 65/07.08.2018.

<sup>73</sup> See in English: “The Decision of the Constitutional Court Humiliated Us All!” Statement by Bulgarian NGOs regarding the decision of the Bulgarian Constitutional Court on the unconstitutionality of the Istanbul Convention, 27 July 2018, <https://www.bghelsinki.org/en/news/bg/single/decision-constitutional-court-humiliated-us-all/>.

<sup>74</sup> See: <https://ravni.bg/>.

<sup>75</sup> Kristina Koldinská *Czech Republic: Gender equality - How are EU rules transposed into national law? Country report*, European Commission, Directorate-General for Justice and Consumers (Brussels, 2019), <https://doi.org/10.2838/664704>, p. 52.

<sup>76</sup> Brian Kenety, “Czech Women’s Lobby: Societal view on rape underscores importance of “Istanbul Convention”,” *Radio Prague International* (2018, November 8), <https://bit.ly/38ejrw4>.

<sup>77</sup> See (in Hungarian) <https://www.parlament.hu/irom39/06958/06958.pdf>, p. 381. See also: Zsolt Szomora, “A szexuális önrendelkezés büntetőjogi védelme [Protection of sexual self-determination by criminal law],” *Fundamentum* 21, no. 3-4 (2017).

<sup>78</sup> Lídia Balogh, *Hungary: Gender equality - How are EU rules transposed into national law? Country report*, European Commission, Directorate-General for Justice and Consumers (Brussels, 2019), <https://doi.org/10.2838/538782>, p. 68.

Parliament for a resolution on strategic objectives in the field of combating domestic violence.<sup>79</sup> Although according to the assessment of women's NGOs, the proposed measures lagged behind the provisions outlined in the Convention,<sup>80</sup> the resolution was adopted by the Parliament.<sup>81</sup> In March 2016, women's organisations launched a petition for the ratification of the Convention.<sup>82</sup> In May 2016, after a country mission to Hungary, the UN Working Group on the issue of discrimination against women claimed in an expert statement that the Hungarian government "should bring about the ratification of the Istanbul Convention as soon as possible."<sup>83</sup>

On 14 February 2017, the government published on its website a proposal, to be submitted to the Parliament, for the ratification of the Istanbul Convention;<sup>84</sup> and announced a "public consultation" session (a feature of the drafting of legislation) for 9 days; however, the legislative process stopped after this phase. On 23 February, the Hungarian branch of CitizenGo (a conservative advocacy group, operating in numerous countries worldwide) launched a petition with a following title: *"Let's combat violence, but not through the ratification of the Istanbul Convention! The implementation of the Istanbul Convention may be the Trojan horse of gender ideology for Hungary"*.<sup>85</sup>

A few months later, in November 2017, the vice president of Fidesz (the larger party in the governing coalition) stated in an interview that "[t]he Istanbul Convention is not about the equality of women, nor is it about the rights of women, it is rather 'very sneaky' gender politics" (during this interview, he erroneously claimed that the Istanbul Convention was not even signed by Hungary).<sup>86</sup>

Before the general elections due in April 2018, the Centre for Fundamental Rights (*Alapjogokért Központ*), a pro-government think-tank published a position paper, claiming that "while the document seemingly deals with the 'prevention of violence against women and domestic violence', it would introduce the category of 'gender' as a 'socially constructed role', additionally to the procreated, biological sexes, which is contrary not only to sober sense, but to the Fundamental Law [Constitution] of Hungary as well".<sup>87</sup>

In November 2018, female MPs from opposition parties demonstrated for the ratification of the Convention.<sup>88</sup>

In Hungary, the political climate's key element is (since 2015) the government's anti-immigrant rhetoric; which is, according to the Council of Europe Commissioner for Human Rights' report after visiting Hungary in February 2019, "shaped around the distorted and manipulated image of the philanthropist George Soros" as a "globalist" supporter of migration.<sup>89</sup> The anti-immigrant rhetoric

<sup>79</sup> See: <https://www.parlament.hu/irom40/05048/05048.pdf>.

<sup>80</sup> See the press release (11 June 2015). <https://bit.ly/2uOZY7I>

<sup>81</sup> Hungary, Parliament Resolution No. 30/2015. (VII. 7.) on Defining the National Strategic Aims that Promote Effective Measures Against Partnership Violence (30/2015. (VII. 7.) OGY határozat a kapcsolati erőszak elleni hatékony fellépést elősegítő nemzeti stratégiai célok meghatározásáról), 30 June 2015.

<sup>82</sup> See the petition (31 March 2016), [https://www.peticiok.com/hatekony\\_fellepest\\_a\\_nk\\_elleni\\_es\\_csaladon\\_beluli\\_erszak\\_ellen](https://www.peticiok.com/hatekony_fellepest_a_nk_elleni_es_csaladon_beluli_erszak_ellen).

<sup>83</sup> UN Working Group on the issue of discrimination against women in law and in practice finalizes country mission to Hungary, News Release, 2016, May 27, available at: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20027&LangID=E>.

<sup>84</sup> The document is no longer available online.

<sup>85</sup> See: <https://www.citizenngo.org/hu/fm/41487-az-isztambuli-egyezmény-alairasa-gender-ideologia-trojai-falovat-jelentheti-magyarorszag>.

<sup>86</sup> András Jámbor, "Németh Szilárd szerint minden rendben van a nők elleni erőszak ügyében [According to Szilárd Németh, everything is fine regarding the issue of violence against women]," *Mérce* (2017, November 14), <https://merce.hu/2017/11/14/nemeth-szilard-szerint-semmi-szukseg-a-nok-eroszak-elleni-kiallasra/>.

<sup>87</sup> See: "A választások után sem kerülhet szóba a gender-egyezmény elfogadása" [The ratification of the Gender Convention should not be considered, neither after the elections], <https://bit.ly/38heXF3>, p. 1.

<sup>88</sup> Tamás Botos, "Orbán azt mondta, szerződne a nőekkel. Itt a lehetőség: ratifikálja a kormány az Isztambuli Egyezményt! [Orbán said he would like to reach an agreement with the women. Here is a way for it: the Government should ratify the Istanbul Convention!], 444.hu (2018, November 23), <https://bit.ly/3cm7hoc>.

<sup>89</sup> Commissioner for Human Rights of the Council of Europe, Dunja Mijatović: Report Following Her Visit to Hungary from 4 to 8 February 2019, Point 35, <https://bit.ly/2wnlWYQ>.

has served as context for the government's anti-ratification argumentation as well. In January 2020, the government published a draft bill "on the amendment of certain Acts with the aim of providing a higher level of protection for victims of serious forms of intrapersonal violence committed by a relative."<sup>90</sup> A few days later the Minister of Justice published an article on a news portal in which she claimed that *"the Hungarian Government does not support the ratification of the Istanbul Convention, because certain provisions of it contravene the Government's migration politics. The Government is not intended to implement the concept of gender or the Convention's gender ideology into domestic law"*.<sup>91</sup> The article refers to an overview of „The legal tools of protecting women and combating relationship violence [domestic violence]”, published in the form of a table, comparing the national measures with the provisions of the Istanbul Convention – but not the provisions of the latter on migration and asylum.<sup>92</sup>

The Hungarian Helsinki Committee reacted to the governmental plans with concerns, but the criticism targeted rather the “carceral” approach (and not the abandonment of the Convention's ratification): *“Tightened criminal laws in themselves will not hold back, typically, the perpetrators, and will not provide protection for victims. [...] Tightened laws would further burden the prisons.”*<sup>93</sup>

It should be noted that on 28 November 2019 none of the MEPs from Hungary voted against the resolution on the EU's accession to the convention, however, 12 MEPs absented (11 out of the 13 MEPs delegated by the governing coalition).

#### 2.4.4 Latvia

When it signed the Convention on 18 May 2016, after several months of heated political debates between politicians, scholars and officials concerning the substance of the document,<sup>94</sup> Latvia declared that it would apply the Convention *“in conformity with the principles and the provisions of the Constitution of the Republic of Latvia”*.<sup>95</sup>

Latvia signed the Istanbul Convention on 18 May 2016, In February 2018, the Cabinet of Ministers postponed the submission of a draft decision on ratification to the Parliament; the decision was apparently influenced by the expressed concerns of the Latvian Catholic Church and the Latvian Lutheran Church, that the application of the Convention's concept on gender would have “serious consequences” regarding domestic provisions:<sup>96</sup> it would threaten the Latvian concept of family (based on marriage between man and woman, and on biological parenthood) and would lead to the introduction of same-sex marriage or to the extension of transgender rights.<sup>97</sup> There were expectations that the situation would change after the parliamentary elections in 2018, as liberals had campaigned with the promise of ratification; however, eventually a heterogenous coalition government was formed, and the issue of ratification disappeared from the agenda.<sup>98</sup>

On 28 November 2019, there was one MEP from Latvia among those 91 who voted against the resolution which calls for the EU's accession to the Convention and urges EU member states to ratify the Convention as well. A couple of days later, the Chair of the Foreign Affairs Committee of

<sup>90</sup> The draft bill is available in Hungarian at:

[https://www.kormany.hu/download/2/f0/c1000/felt%C3%A9teles\\_normasz%C3%B6veg\\_indokol%C3%A1s\\_200121.pdf](https://www.kormany.hu/download/2/f0/c1000/felt%C3%A9teles_normasz%C3%B6veg_indokol%C3%A1s_200121.pdf).

<sup>91</sup> Judit Varga, "Az Isztambuli Egyezményről [On the Istanbul Convention]," *Mandiner* (2020, January 30), [https://mandiner.hu/cikk/20200130\\_az\\_isztambuli\\_egyezmennyrol](https://mandiner.hu/cikk/20200130_az_isztambuli_egyezmennyrol).

<sup>92</sup> See: <https://www.kormany.hu/hu/igazsagugyi-miniszterium/hirek/a-nok-vedelmet-es-a-kapcsolat-elleni-eroszak-elleni-kuzdelmet-szolgalo-jogi-eszkozok>.

<sup>93</sup> See: Hungarian Helsinki Committee: „A „hirtelen felindulásból elkövetett” szigorítás nem segít az áldozatokon” [Tightening the law, “under a sudden impulse”, does not help the victims] (2020, January 29), <https://www.helsinki.hu/a-hirtelen-felindulasbol-elkovetett-szigoritas-nem-segit-az-aldozatokon/>.

<sup>94</sup> Kristine Dupate, *Latvia: Gender equality - How are EU rules transposed into national law? Country report*, European Commission, Directorate-General for Justice and Consumers (Brussels, 2019), <http://doi.org/10.2838/230675>. p. 58.

<sup>95</sup> See: [https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/210/declarations?p\\_auth=ux4rVpLE](https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/210/declarations?p_auth=ux4rVpLE).

<sup>96</sup> Dupate, *Latvia: Gender equality - How are EU rules transposed into national law? Country report*. p. 59.

<sup>97</sup> Ibid, p. 10.

<sup>98</sup> Ibid, p. 59.

the Latvian Parliament reacted on the adaptation of the resolution aloofly: *“The European Parliament can say lots of things. Nevertheless, we have sovereignty over international agreements and their implementation at the national level”*.<sup>99</sup>

#### 2.4.5 Lithuania

When it signed the Convention on 7 June 2013, Lithuania declared that it would apply the Convention *“in conformity with the principles and the provisions of the Constitution of the Republic of Lithuania”*.<sup>100</sup>

In 2018, the President of Lithuania submitted the Istanbul Convention to the Parliament for ratification, but the ruling parties, backed by the Catholic Church, rejected it.<sup>101</sup> Apparently, the ratification process has been halted for political (and not financial) reasons; namely because of the evolvement of the anti-gender discourse: a fierce public debate developed around the question of whether the reference to “gender identity” (as a prohibited ground of discrimination) and the definition of “gender” (as a social construct) would lead to the promotion of LGBT rights in Lithuania.<sup>102</sup>

A document, issued by the UN Committee on the Elimination of Discrimination against Women in October 2019 includes the records of a dialogue between the Committee and the delegation of Lithuania, on the occasion of the review of Lithuania’s sixth periodic report on the implementation of the UN CEDAW Convention. When the Committee asked: *“It seemed self-evident that a country like Lithuania would ratify the Istanbul Convention. The State party should seize this opportunity to reinforce the law on equality?”*, the Lithuanian delegation explained that *“various factors impeded the ratification of the Istanbul Convention, including a wariness of the introduction of non-stereotypical gender roles as well as the fear that such non-stereotypical gender roles would lead to the introduction of same-sex marriage”*.<sup>103</sup>

However, on 28 November 2019 none of the MEPs from Lithuania voted against the resolution on the EU’s accession to the Convention, and none of them absented.

#### 2.4.6 Slovakia

The Slovak Republic was among the first countries to sign the Istanbul Convention, on 11 May 2011.

The ratification of the Convention was included in the National Action Plan for the Prevention and Elimination of Violence against Women 2014-2019.<sup>104</sup> The Minister of Justice claimed in 2014 that a special law on domestic violence had to be enacted prior to ratification, and called for dialogue to discuss conservative organisations’ concerns about alleged “gender ideology” in the Istanbul Convention.<sup>105</sup>

The ratification of the Convention was put on the agenda in 2015, with the active involvement of several NGOs, but his pro-ratification campaign was followed by negative reactions from religious

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<sup>99</sup> See: Latvijas Radio, “Latvia still not ready to ratify Istanbul Convention” (2019, December 3), <https://bit.ly/2la439t>.

<sup>100</sup> See: [https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/210/declarations?p\\_auth=ux4rVpIE](https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/210/declarations?p_auth=ux4rVpIE).

<sup>101</sup> Tomas Davulis, *Lithuania: Gender equality - How are EU rules transposed into national law? Country report*, European Commission, Directorate-General for Justice and Consumers (Brussels, 2019), <https://doi.org/10.2838/46530>. p. 47.

<sup>102</sup> Ibid, p. 47.

<sup>103</sup> UN Committee on the Elimination of Discrimination, In dialogue with Lithuania, Committee on the Elimination of Discrimination against Women calls for the full implementation of the Istanbul Convention and improvements to gender equality legislation Committee on Elimination of Discrimination against Women, 2019, October 31, <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25246&LangID=E>.

<sup>104</sup> See in English: [http://www.gender.gov.sk/wp-content/uploads/2012/06/NAP\\_VaW\\_2014-2019\\_EN.pdf](http://www.gender.gov.sk/wp-content/uploads/2012/06/NAP_VaW_2014-2019_EN.pdf).

<sup>105</sup> Slovak National Centre for Human Rights: *Report on the observance of human rights including the observance of the principle of equal treatment and the rights of the child in the Slovak Republic for the year 2014, 2015*, [http://www.snslp.sk/CCMS/files/komplet\\_prekald\\_spravy\\_AJ\\_final.pdf](http://www.snslp.sk/CCMS/files/komplet_prekald_spravy_AJ_final.pdf), pp. 44-48.



organisations; and in May 2015 one of these initiated a petition against the ratification of the Convention.<sup>106</sup>

In 2016, the newly elected government, based on the coalition of four parties, declared its intention to: *“pay particular attention to reducing inequalities between men and women in all spheres of public and private life in accordance with the adopted strategic documents and international commitments of the Slovak Republic”*, and claimed that in this context particular emphasis would be on combating violence against women; however no steps were taken towards the ratification of the Convention.<sup>107</sup>

On 28 November 2019, out of the 91 MEPs who voted against the EU’s accession to the Convention in 3 were from Slovakia.

In December 2019, the Government authorised the Prime Minister (the former Deputy Prime Minister Peter Pellegrini, who formed a new government in March 2018, after the resignation of Prime Minister Fico) to request the President of the Republic to announce to the Council of Europe Slovakia’s intent to withdraw its signature from the Istanbul Convention – but the President did not comply with the request. On 12 February 2020 (shortly before the general election due on 29 February), the Prime Minister announced that the government rejected the Istanbul Convention, moreover, recommended the Parliament to voice a similar disapproval of the document.<sup>108</sup> (Notably, the majority party in the governing coalition is the left-wing Smer-SD.) On February 25, the overwhelming majority of the MPs present (96 out of 113) voted to reject the ratification of the Istanbul Convention.<sup>109</sup>

### 3 THE DYNAMICS OF THE DEBATES

Obviously, the (conservative) anti-gender voices, which were somewhat interconnected in the transnational sphere, determined the direction of the debates in the scenarios presented above. The significance of the other two sets of concerns were rather limited. The feminist concerns, most importantly about the gender-neutral conceptualisation of domestic violence in the Convention, were never discussed in public, apparently – instead, mainstream feminist actors invested all of their energies into defending the Convention (and its concepts) and promoting its ratification. The libertarian concerns regarding the strict definition of sexual violence played some role in public debates in Germany, until the moment when concerns about state oppression over individual freedom were washed away by worries regarding the impacts of migration. Another manifestation of a libertarian concern was the communication of the Hungarian Helsinki Committee from in January 2020, in the name of the “anti-carceral” approach, concerning the government’s legislative plan to substitute the ratification of the Istanbul Convention.

In the section below, the relevance of the anti-gender claims and the defensive strategies will be analysed regarding the ratification (or the rejection) of the Istanbul Convention.

#### 3.1 In defence of the Convention

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<sup>106</sup> Zuzana Magurová, *Slovakia: Gender Equality Law in 36 European Countries: How are EU rules transposed into national law? 2019 Report* (2020), <https://doi.org/10.2838/74846>. p. 77.

<sup>107</sup> Ibid p. 78.

<sup>108</sup> See: Pellegrini: House Now Free to Reject Istanbul Convention Definitively, *NewsNow*, 2020, February 12, <https://newsnow.tasr.sk/policy/pellegrini-house-now-free-to-reject-istanbul-convention-definitively/>

<sup>109</sup> See: “Parliament approves 13th pensions just days before the elections”, *The Slovak Spectator*, 26 February 2020, <https://spectator.sme.sk/c/22334599/parliament-rejects-istanbul-and-approves-13th-pensions.html>.

The (conservative) anti-gender discourse defined not just the agenda, but also the dynamics of the debates, by pushing the supporters of the Convention, including the Council of Europe itself, into a basically reactionary, defensive role. The overwhelming power of the anti-gender discourse was perceivable wherever it appeared, as it is documented in the reflections of the promoters of the Convention.

This phenomenon is described by the authors of a comparative report on the “anti-gender” discourse and its impacts in Austria, Hungary, Italy, Poland, Romania and Slovakia: *“The first news about misinterpreting the word “gender” and creating the concept “gender ideology” that undermines families and cultures shocked and surprised feminists, gender studies scholars, gender equality experts and civil servants who worked with gender mainstreaming in the first years of the millennia [...] Considerable energy went into trying to explain that the concept of gender ideology is wrong, or that there is no such ideology.”*<sup>110</sup>

In Croatia, according to the phrasing of an expert report: *“experts and proponents of the ratification were caught in the absurd situation where they had to explain and justify the meaning of ‘gender’ and its application in the Croatian legislative framework and practice, instead of concentrating on the real necessity for the Convention’s ratification, which consists in creating a coherent framework and reinforcing existing mechanisms for the eradication and prevention of domestic violence and violence against women”*.<sup>111</sup>

Similar experiences were reported by a gender expert from Bulgaria: *“Unfortunately, the strong attacks against the Istanbul Convention and gender equality as a whole, against central concepts of equality – like sex, gender, transgender, gender equality, sexual orientation, gender-based violence – found governmental institutions in Bulgaria unprepared and they could not explain basic standards and concepts to the public. The burden fell on non-governmental organisations which did not have the resources and the authority for that.”*<sup>112</sup>

The dynamics of the opponents’ actions and the supporters’ reactions were similar on the transnational level. In April 2018, 333 NGOs from nine Council of Europe member states sent a letter to the Secretary General of the Council of Europe (160 from Romania, 46 from Bulgaria, 43 from Lithuania, 35 and Slovakia, 16 from Ukraine, 14 from Croatia, 12 from Hungary, 6 from Latvia, and one from Malta), requesting major revisions in the Istanbul Convention *“in order to replace gender and related concepts with equality between men and women”*, and the right for states to *“provide reservations on the controversial and ideological parts of the Convention”*.<sup>113</sup> The European Coalition to End Violence Against Women and Girls (formed by 3,835 NGOs from 49 countries) as a response to this, sent also a letter to the Council of Europe, to express support for the Istanbul Convention, to reject the need for revisions, and to provide an explanation of the concept of gender.<sup>114</sup>

The Council of Europe itself also attempted to counterbalance the anti-gender discourse, as it was getting more and more successful in some contexts. In January 2018, the Council of Europe’s Human Rights Commissioner published a communication regarding the situation in Bulgaria: *“Take for example the claim built around the word “gender”. Some pretend that the use of this word in the Convention has hidden purposes and effects. This is simply not true. [...] The critics go as far as to argue that the Convention would destroy families. In reality, the opposite is true.”*<sup>115</sup> Bridget O’Loughlin, the executive secretary of the Istanbul Convention communicated, on the occasion of the International Women’s Day in 2018, that the Council of Europe noticed *“with some dismay that several Council of Europe member states are showing ‘cold feet’ in moves to ratify”* the Istanbul

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<sup>110</sup> Enikő Pap and Borbála Juhász, *Backlash in gender equality and women’s and girls’ rights. Study*, European Parliament, Policy Department for Citizens’ Rights and Constitutional Affairs (Brussels, 2018, August 3), <https://doi.org/10.2861/866870>, p. 9.

<sup>111</sup> Martinović, *Croatia: Gender equality - How are EU rules transposed into national law? Country report*. p. 75.

<sup>112</sup> Tisheva, *Bulgaria: Gender equality - How are EU rules transposed into national law? Country report*. p. 15.

<sup>113</sup> Available at: <https://www.irs.in.ua/files/publications/Letter-to-Secretary-General-of-CoE-Thorbjorn-jagland.pdf>.

<sup>114</sup> Available at: <https://bit.ly/2PEvignp>.

<sup>115</sup> Council of Europe, “The Istanbul Convention protects women, without hidden purposes.”

Convention, and that “misconceptions about its purpose [...] are spreading like fog in some countries”.<sup>116</sup> This communication, with the aim “clearing the fog”, tries to reflect to a number of frequently expressed concerns: “Does that mean that our convention opposes traditional gender roles? Of course not. [...] it was never designed to force women or men to live certain ways. The education that the convention does require is to end stereotypes based on the idea that women are inferior to men – and that it is okay for them to be beaten [...] Some claim that our convention promotes same-sex marriage, but [...] the subject of same-sex marriage is outside the legal scope of the Istanbul Convention. Nor does the convention oblige states to legally recognise a third sex under domestic law, as some people mistakenly believe [...] Yet another misconception is that the convention calls for a new “refugee status” for transgender or intersex persons, as has been sometimes erroneously reported. This is not true, either.”<sup>117</sup>

In the context of the European Union, the non-ratification of the Convention has been discussed in the EP resolution on experiencing a backlash in women’s rights and gender equality in the EU: “[The European Parliament] *Condemns the campaign against the Istanbul Convention that targets violence against women and its misinterpretation; is worried about the rejection of the zero-tolerance norm for violence against women and gender-based violence, for which there is a strong international consensus; indicates that the very essence of the principles of human rights, equality, autonomy and dignity is being questioned.*”<sup>118</sup>

### 3.2 The relevance of the defensive strategies

Looking at the country-level debates, the question arises: to what extent may be considered the rejection of the ratification as the rejection of the Convention’s actual provisions? And if the connection between the anti-gender concerns and the Convention’s content is vague, how relevant are the above-mentioned defensive strategies? According to some, not much.

In the title of an opinion piece, Elena Zacharenko considers the non-ratification of the Istanbul Convention as a “collateral damage” in the “war on gender ideology”.<sup>119</sup> Stanislav Dodov, in an essay written in the context of the Bulgarian debates about ratification, shares similar views: “At the end, it was always about an ideological battle [...] under which smoulders the old struggle between groups with disparate social, cultural and economic capital and incompatible interests”. This international legal document was only the concrete occasion for the scandal, that could have happened in other forms and at another point in time.”<sup>120</sup>

Indeed, the anti-gender discourse has been dealing with the actual content of the Istanbul Convention to a very limited extent. As Irem Ebeturk claims: “Perhaps not surprisingly, missing from the discourse against the Convention was references to the Convention itself. The opposing groups rarely referred to the actual articles of the Convention while expressing their discomfort.”<sup>121</sup>

In light of all of this, the defensive efforts of the Convention’s promoters seem rather irrelevant, as Marita Zitmane claims, analysing the related debates in Latvia: “The most naive interpretation is that anti-genderism is a misunderstanding by ignorant people, and that if the concept of gender and gender equality is explained in an understandable way they will know that there is nothing to fear. This interpretation proved wrong when “let’s explain it to them” strategies failed.”<sup>122</sup>

<sup>116</sup> Bridget O’Loughlin, “Istanbul Convention: clearing away the fog of misconceptions,” *EU Observer* (2018, March 8), <https://euobserver.com/opinion/141235>.

<sup>117</sup> *Ibid.*

<sup>118</sup> European Parliament resolution of 13 February 2019 on experiencing a backlash in women’s rights and gender equality in the EU (2018/2684(RSP)).

<sup>119</sup> Zacharenko, “The neoliberal fuel to the anti-gender movement.”

<sup>120</sup> Dodov, “It was never about the Istanbul Convention.”

<sup>121</sup> Irem Ebeturk, “Norms of gender equality and the backlash against Istanbul Convention,” *Orders Beyond Borders*, 2018, June 6, <https://bit.ly/39gz4Vg>.

<sup>122</sup> Marita Zitmane, “Evils of the Istanbul Convention. Discourse analysis of Latvian press publications (2016),” *Femeris* 3, no. 1 (2018), <https://doi.org/10.20318/femeris.2018.4077>, p. 33.

### 3.3 The relevance of the anti-gender concerns

While the relevance of the previously applied defensive strategies is obviously questionable, the most sensitive question for the promoters of ratification has been the relevance of the anti-gender concerns – in relation to the Convention, or from the broader sense. To put it in other words: what if the anti-gender concerns are not to be considered entirely as misunderstandings? The relative silence around these hesitations is explained by Zacharenko, who claims: *"It is often argued that the progressive movement cannot be seen to be internally squabbling in the face of the advance of the right, lest they become the 'useful idiots' furthering their opponents' cause."*<sup>123</sup>

Firstly, there is the question of the very meaning of the term gender, at the very centre of the debates. While the Convention includes a "classic" constructivist and binaristic<sup>124</sup> conceptualisation of gender (*"gender' shall mean the socially constructed roles, behaviours, activities and attributes that a given society considers appropriate for women and men*), the meaning of the term has been evolving divergently since the adoption of the Convention, not only in political discourse but in the texts of the norm-setting documents as well, e.g. in the context of the European Union. These incongruencies (controversies) are problematized e.g. in the above-mentioned letter sent in 2018 by anti-gender NGOs to the Council of Europe against the phrasing of the Istanbul Convention.<sup>125</sup> A more recent example is a call issued by the European Commission in December 2019 which define gender-based violence as *"violence directed against a person because of that person's gender (including gender identity/expression) or as violence that affects persons of a particular gender disproportionately"*.<sup>126</sup> In her essays from 2019, philosopher Kathleen Stock identifies five different ways of using the term gender: 1<sup>st</sup> as a straightforward (polite-sounding) synonym for biological sex; 2<sup>nd</sup> as the culturally approved collection of stereotypical characteristics for men and women (respectively); 3<sup>rd</sup> as social role (womanhood or manhood, based on stereotypes relating feminine or masculine); 4<sup>th</sup> as a synonym for sex, but in a new, constructivist sense (where sex is understood as something constructed); 5<sup>th</sup> as gender identity (a person's individual feelings).<sup>127</sup> Moreover, there may be a 6<sup>th</sup> meaning: according to the analysis of Kováts, the term gender may refer simply to women; e.g. *"gender analysis in policy-making is often used to describe how measures affect women"*.<sup>128</sup>

Secondly, there is the question whether the Convention is about the extension of transgender rights or not. According to the anti-gender discourse it is; according to the promoters of the Convention, it is not. As for the latter side, the account of Noá Nógrádi may be mentioned, who argued in the context of the Hungarian debates that: *"The Convention is not about transgender issues. The text of it uses the term gender consequently in the meaning of social gender and gender role, and not in the meaning internal, personally defined gender identity."*<sup>129</sup> Actually, the text of the Convention refers to gender identity at one point, relating to the principle of non-discrimination, and the Explanatory Report details that individuals may *"experience discrimination on the basis of their gender identity, which in simple terms means that the gender they identify with is not in conformity with the sex assigned to them at birth. This includes categories of individuals such as transgender or transsexual persons, crossdressers, transvestites and other groups of persons that do*

<sup>123</sup> Elena Zacharenko, "The neoliberal fuel to the anti-gender movement," *International Politics and Society* (2019, September 30), <https://www.ips-journal.eu/regions/europe/article/show/the-neoliberal-fuel-to-the-anti-gender-movement-3747/>.

<sup>124</sup> Based on the presumption that there are basically two genders (male and female).

<sup>125</sup> See: <https://www.irs.in.ua/files/publications/Letter-to-Secretary-General-of-CoE-Thorbjorn-Jagland.pdf>.

<sup>126</sup> Call for proposals to prevent and combat all forms of violence against children, young people and women (ID: REC-RDAP-GBV-AG-2020), 16 December 2019, <https://bit.ly/2ldCVq1>.

<sup>127</sup> Kathleen Stock, "Can You Change Your Gender?," *Medium* (2019, July 25), <https://medium.com/@kathleenstock/can-you-change-your-gender-7b0c469e0b4b>.

<sup>128</sup> Eszter Kováts, "Limits of the Human Rights Vocabulary in Addressing Inequalities: Dilemmas of Justice in the Age of Culture Wars in Hungary," *Intersections. East European Journal of Society and Politics* 5, no. 2 (2019), <https://doi.org/10.17356/ieejsp.v5i2.498>, <https://doi.org/10.17356/ieejsp.v5i2.498>. p. 63.

<sup>129</sup> Noá Nógrádi W., "A nők elleni erőszakkal szemben fellépni nem férfiellenes, és transzneműséghez sem vezet - az isztambuli egyezményről [It's not misoandrist to combat violence against women, and it does not lead to transgenderism, either - on the Istanbul Convention]," *Kettősmérce.hu* (2017, March 11), <https://bit.ly/2vvH4D6>.

not correspond to what society has established as belonging to 'male' or 'female' categories".<sup>130</sup> Moreover, the Transgender Europe (TGEU, an umbrella organisation of European transgender rights NGOs) in 2018 called explicitly for "concrete actions based on the Istanbul Convention, such as devising clear policies for providing victims with redress and prevent further violence, also the establishment of services such as shelters, medical services, counselling and legal aid that are competent and inclusive of trans people".<sup>131</sup> Anyhow, the study of the growing influence and success of transgender movements, presented by Rogers Brubaker in his 2016 monograph,<sup>132</sup> will "complement the scholarship on 'anti-gender movements' and give a deeper understanding concerning the antagonizing gender controversies", as suggested by Kováts in 2019.<sup>133</sup>

## CONCLUSIONS

Considering the ratification scenarios in different EU member states and the impacts of the different on the related debates, the non-ratification of the Istanbul Convention seems to be a collateral damage in the transnational "war on gender"; a war which is, in turn, not fought against gender only, but against a numerous other issues as well. According to my position, it is indeed a damage, as the Convention could have been an authoritative tool of pressuring governments to increase efforts and to secure adequate funds with the aim of eliminating violence against women – and an adequate tool, since the Convention's provisions imply many of the experiences of professionals working on relating fields.

The anti-gender discourse, and within this framework the rejection of the Istanbul Convention, cannot be considered simply as a backlash against gender equality, as it is rather motivated by the demand for right wing populism or fuelled by unaddressed concerns of masses regarding various aspects of life and politics. These concerns are in no way peculiar to Central-Eastern Europe – this is shown by the votes of MEP's from old member states against the EP resolution on the EU's accession to the Convention. However, for complex and diverse reasons, the anti-gender discourse proved to be more successful in the Central-Eastern region, at least in terms of non-ratification. To understand this phenomenon, it may be helpful to consider Brubakers's framework on the divergent forms of populism, characterized by civilizationism in Western/Nordic countries with significant migrant populations, and by nationalism in the ethnically more homogenous countries in Central-Eastern Europe.

Within the framework of the anti-gender debate, only a scarce few of the Convention's provisions have been discussed during the debates. It should be noted, however, that the relevance of the anti-gender concerns is put in a new light since the modification (or diversification) of the concept of gender, reflected e.g. in EU documents. Besides the dominant anti-gender voice, the more concrete feminist concerns have not been raised in public debates, while the libertarian counter-argumentation have not been proved to be effective yet. Considering any of the presented types of concerns, the eventual flaws or shortcomings of the Convention will be shown by the experiences and impacts of its implementation (or non-implementation).

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<sup>130</sup> Explanatory Report, Point 53.

<sup>131</sup> Transgender Europe: Robust action needed to stop violence against trans people, 8 March 2018, [https://tgeu.org/wp-content/uploads/2018/03/GBV-Policy-Brief\\_IWD.pdf?fbclid=IwAR3dRRnijxTbi65Mm0qeVCenQmuSsD\\_DgTINZrMFp8DCMWmFYyjK0pKITM](https://tgeu.org/wp-content/uploads/2018/03/GBV-Policy-Brief_IWD.pdf?fbclid=IwAR3dRRnijxTbi65Mm0qeVCenQmuSsD_DgTINZrMFp8DCMWmFYyjK0pKITM)

<sup>132</sup> Rogers Brubaker, *Trans: Gender and Race in an Age of Unsettled Identities* (Princeton University Press, 2016).

<sup>133</sup> Eszter Kováts, "'Not A Thing?' Rogers Brubaker's Trans: Gender and Race in an Age of Unsettled Identities and Its Relevance for Central and Eastern Europe," *Identities. Journal for Politics, Gender and Culture* 16, no. 1-2 (2019).

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